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Legal Procedure - Collateral Estoppel Doctrine - Application of Collateral Estoppel from an Administrative Hearing to a Civil Action

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LEGAL PROCEDURE—COLLATERAL ESTOPPEL DOCTRINE—APPLICATION OF COLLATERAL ESTOPPEL FROM AN ADMINISTRATIVE HEARING TO A CIVIL ACTION—The Pennsylvania Supreme Court held that, given the fast and informal nature of unemployment compensation proceedings, as well as the economic risk in those actions, a factual finding made during an unemployment compensation hearing should not be afforded preclusive effect in a subsequent civil action brought by the same employee.

Rue v. K-Mart Corp., 713 A.2d 82 (Pa. 1998).

After receiving unemployment compensation from her former employer, K-Mart Corporation (“K-Mart”), Patricia Rue sued K-Mart for defamation in the Bucks County Court of Common Pleas.¹ Rue, an employee at the K-Mart distribution center in Bucks County, Pennsylvania, had been fired on January 10, 1989.² K-Mart management informed Rue that she was terminated because security personnel had observed her eating a bag of potato chips that she had allegedly stolen from inventory.³ After Rue’s termination, the remaining employees at the K-Mart distribution center began to gossip about the possible circumstances surrounding Rue’s dismissal. This gossip resulted in a decrease in productivity.⁴ To halt the decrease in productivity, the management

1. *Rue v. K-Mart Corp.*, 713 A.2d 82, 83-84 (Pa. 1998). Defamation is defined as “an intentional false communication, either published or publicly spoken, that injures another’s reputation or good name.” BLACK’S LAW DICTIONARY 417 (6th ed. 1990).

“Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil.” *Id.*

2. *Rue*, 713 A.2d at 83. Patricia Rue had worked for Defendant K-Mart for over 12 years as a warehouse employee. *Rue v. K-Mart Corp.*, 67 Bucks Co. L. Rep. 107 (Pa. C. 1995). The warehouse in which Patricia worked was a distribution center for all K-Mart products. *Rue*, 67 Bucks Co. L. Rep. at 107.

3. *Rue*, 713 A.2d at 83. Items stored at the K-Mart distribution warehouse include edible food items. *Rue*, 67 Bucks Co. L. Rep. at 107. The security personnel who allegedly observed Rue eating the potato chips testified as to their observations at the Unemployment Compensation hearing, as did witnesses for the defendant (Rue). Brief for Appellee at 11, *Rue v. K-Mart Corp.*, 713 A.2d 82 (1998) (No. 90-00248-19-2). Allegedly K-Mart had been having problems during that time with employees breaking into boxes that were stored at the warehouse distribution center that contained edible food items and eating said food items while at work. *Rue*, 67 Bucks Co. L. Rep. at 107. The security guards had reported to K-Mart that they had observed Rue eating a bag of potato chips at work. *Id.* K-Mart then informed Rue that she had been observed stealing a bag of potato chips out of inventory and was terminated. *Id.*

4. *Rue*, 713 A.2d at 83.

of the K-Mart distribution center conducted a meeting with the employees during which they informed the employees that Rue had been dismissed for misappropriation of company property.⁵

After Rue was fired from her job, the local job center granted her application for unemployment compensation.⁶ In response, K-Mart appealed the decision to grant Rue unemployment benefits.⁷ K-Mart argued that Rue was fired for an act that constituted willful misconduct⁸ and, therefore, was not entitled to benefits pursuant to Pennsylvania law.⁹ During the hearing, K-Mart presented evidence to the referee to support its contention that Rue was terminated because she stole and ate a bag of potato chips from K-Mart inventory.¹⁰ After the hearing, the referee affirmed the compensation award granted by the job center and found that, as a matter of fact, Rue did not steal the bag of potato chips.¹¹ K-Mart did not appeal this decision.¹²

Thereafter, Rue filed a civil defamation action in the Bucks County Court of Common Pleas, in which she alleged that, by telling her former co-workers the reason for her termination, K-Mart had defamed her.¹³ Before trial, the trial court granted Rue's motion in limine to preclude K-Mart from introducing any evidence or testimony at trial to substantiate the allegation that Rue had stolen a bag of potato chips from the corporation.¹⁴ In granting the

5. *Id.* The Plaintiff's co-workers were told that Rue had been fired for concealing and eating a bag of potato chips and were urged to return to their work. *Rue v. K-Mart Corp.*, 691 A.2d 498, 499 (Pa. Super. 1997).

6. *Rue*, 713 A.2d at 84.

7. *Id.* Rue was initially awarded benefits and K-Mart appealed the initial award in an Unemployment Compensation Hearing. *Rue*, 67 Bucks Co. L. Rep. at 107.

8. Willful misconduct involves: " (1) wanton and willful disregard of employer's interest, (2) deliberate violation of rules, (3) disregard of standards of behavior which an employer can rightfully expect from his employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for employer's interests or the employee's duties and obligations." BLACK'S LAW DICTIONARY 1600 (6th ed. 1990) citing *Wilson v. Unemployment Compensation Bd. of Review*, 325 A.2d 500, 501 (Pa. Commw. Ct. 1974).

9. *Rue*, 713 A.2d at 84. Pennsylvania Unemployment Compensation Law states that, "An employee shall be ineligible for compensation for any week . . . in which his employment is due to his discharge or temporary suspension from work for willful misconduct connected with his work . . ." 43 PA. CONS. STAT. § 802(e) 1991.

10. *Rue*, 713 A.2d at 84.

11. *Id.* In the referee's written Finding of Fact, stated that Rue "did not misappropriate company property and did not eat a bag of the employer's potato chips on January 10, 1989." *Rue*, 67 Bucks Co. L. Rep. at 107.

12. *Rue*, 713 A.2d at 84.

13. *Id. Rue*, 691 A.2d at 500.

14. *Rue*, 713 A.2d at 84. A motion in limine is "[a] pretrial motion requesting court to

motion in limine, the court applied the doctrine of collateral estoppel to prevent K-Mart from discussing or questioning the determination made by the referee at the unemployment compensation hearing that Rue had not stolen a bag of potato chips.¹⁵ At the conclusion of the trial, the jury found K-Mart liable for defamation.¹⁶ The jury awarded Rue \$90,000 in compensatory damages and \$1.4 million in punitive damages.¹⁷ K-Mart filed motions for post-trial relief, which the court of common pleas denied.¹⁸

K-Mart appealed the judgment to the Pennsylvania Superior Court, which affirmed the trial court's order.¹⁹ Thereafter, K-Mart petitioned for and was granted reargument before the superior court en banc.²⁰ The superior court, en banc, reversed the and

prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to moving party that curative instructions cannot prevent predispositional effect on jury . . . purpose of such motion is to avoid injection into trial of matters which are irrelevant, inadmissible and prejudicial and granting of motion is not a ruling on evidence and, where properly drawn, granting of motion cannot be error." BLACK'S LAW DICTIONARY 1013-1014 (6th ed. 1990).

15. *Rue*, 713 A.2d at 84. Collateral estoppel doctrine occurs when "prior judgement between same parties on different cause of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered . . . When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation." BLACK'S LAW DICTIONARY 261 (6th ed. 1990).

16. *Rue*, 713 A.2d at 84. The jury trial was held in the Court of Common Pleas of Bucks County, Pennsylvania on December 9 and December 12 of 1994. *Rue*, 67 Bucks Co. L. Rep. at 108.

17. *Rue*, 713 A.2d at 84. Compensatory damages, also known as actual damages, is a monetary compensation that is awarded to a complainant to compensate for a proven injury or loss. BLACK'S LAW DICTIONARY 390 (6th ed. 1990). Punitive damages are awarded in addition to compensatory damages when the defendant acted with recklessness, malice, or deceit; such damages are intended to punish or deter such behavior. *Id.*

18. *Rue*, 713 A.2d at 84. In denying K-Mart's Motion or Post-Trial Relief, the trial court determined that in order to grant K-Mart a new trial they had to "consider the entire record to determine whether the verdict was arbitrary or capricious or whether it was against the weight of the evidence, or whether there was clearly error of law or palpable abuse of discretion in the rulings. . . ." *Rue*, 67 Bucks Co. L. Rep. at 108 (quoting *Gonzales v. United States Steel Corp.*, 374 A.2d 1334, 1341 (Pa. Super. 1977), *aff'd*, 398 A.2d 1378 (Pa. 1979)). The trial court then went on to say that "[a] new trial is appropriate only when 'the jury's verdict was so contrary to the evidence as to shock one's sense of justice and 'to make the award of a new trial imperative, so that right may be given another opportunity to prevail.'" *Id.* (quoting *Insurance Co. of Pa. v Miller*, 627 A.2d 797, 798 (Pa. Super. 1993), quoting *Thompson v City of Philadelphia*, 493 A.2d 669, 672 (Pa. 1985)).

19. *Rue*, 713 A.2d at 84. A panel of the Superior Court of Pennsylvania affirmed the Order of the trial court on June 12, 1996, but the opinion was withdrawn upon grant of reargument on August 22, 1996. *Rue*, 691 A.2d at 500. The standard of review used was abuse of discretion. Brief for Appellant at 4, *Rue v K-Mart Corp.*, 713 A.2d 82 (Pa. 1998).

20. *Rue*, 713 A.2d at 84. En banc "[r]efers to a session where the entire membership of

remanded for a new trial on the grounds that the doctrine of collateral estoppel could not be properly used in connection with the factual finding of a referee during an unemployment compensation hearing.²¹ Judge Ford Elliott filed an opinion concurring in part and dissenting in part, in which she disagreed with the majority's analysis of the past application of collateral estoppel in a line of workers' compensation cases but nonetheless agreed with the majority's conclusion in this case.²²

Rue appealed the decision of the Pennsylvania Superior Court en banc to the Supreme Court of Pennsylvania, which granted allocatur.²³ On appeal, the supreme court determined whether the factual findings of a referee in an unemployment compensation hearing doctrine could be applied to a subsequent civil action or did the doctrine of collateral estoppel preclude that from happening.²⁴

The supreme court began its discussion of the case by establishing that the doctrine of collateral estoppel, also known as "issue preclusion," can be applied only after four requirements have been met.²⁵ The four requirements are as follows: (1) the issue presented in the later (civil) action must be identical to the issue decided in the previous action; (2) a final judgment on the merits must have been determined in the first action; (3) the party in the

the court will participate. . . ." BLACK'S LAW DICTIONARY 526 (6th ed. 1990).

21. *Rue*, 713 A.2d at 84. The Superior Court, in making its determination, looked at the public policy underlying the Unemployment Compensation Law. *Id.* at 85. It emphasized that the objective of the Unemployment Compensation system is to get money to the unemployed person requesting it at the earliest point that is administratively possible. *Rue*, 691 A.2d at 502. For that reason, the public policy underlying the Unemployment Compensation Law requires "fast and informal" decision making by the Referee, which does not provide the "full and fair" litigation that is used in civil judicial proceedings, and which is needed for the application of the doctrine of collateral estoppel. *Id.* at 506-08. Consequently, the Superior Court reversed the decision of the trial court, because the trial court had granted use of the doctrine of collateral estoppel to preclude the factual determination of the unemployment compensation referee, which was integral in making a determination of liability. *Id.* at 509. Remand means to send a case back to the court from which it came for further action (in this case for an entirely new trial). BLACK'S LAW DICTIONARY 1293 (6th ed. 1990).

22. *Rue*, 713 A.2d at 84. In her concurring and dissenting opinion, Judge Ford Elliott stated that it was her belief that the same policy considerations should be examined and used regardless of whether the case deals with an Unemployment Compensation issue or a Workers' Compensation issue. *Rue*, 691 A.2d at 509-11 (Ford Elliott, J., concurring and dissenting).

23. *Rue*, 713 A.2d at 83. Allocatur is Latin for "[i]t is allowed," meaning the Supreme Court of Pennsylvania allowed the case to be heard. BLACK'S LAW DICTIONARY 75 (6th ed. 1990).

24. *Rue*, 713 A.2d at 83.

25. *Id.*

later action must be the same party (or be in privity with that party) against whom the issue had been decided in the earlier action; and (4) the party against whom collateral estoppel is being asserted must have had a 'full and fair opportunity to litigate the issue in the first action.²⁶ According to the court, the second and third requirements were unquestionably satisfied in Rue's case because the referee's decision was final once K-Mart failed to appeal it (satisfying the second requirement), and K-Mart was a party to both actions (satisfying the third requirement).²⁷ With prongs two and three satisfied, the court focused its discussion on prong one—whether the issues were identical—and prong four—whether K-Mart had a full and fair opportunity to litigate the action.²⁸

The Pennsylvania Supreme Court held that prong one was satisfied because the issue addressed in Rue's motion in limine in the defamation action (i.e., whether Rue misappropriated and ate a bag of potato chips belonging to K-Mart) was the same issue decided by the referee in the initial action.²⁹ The supreme court looked to the superior court's reliance on *Odgers v. Unemployment Compensation Board of Review* and determined that the lower court had erred in its analysis.³⁰ The supreme court conceded that

26. *Id.* at 84 (citing to *Shaffer v. Smith*, 673 A.2d 872 (Pa. 1996); *Safeguard Mutual Insurance Co. v. Williams*, 345 A.2d 664 (Pa. 1975)). To be in privity there must exist a relationship between two contracting parties, with each having a legally recognized interest in the subject matter. BLACK'S LAW DICTIONARY 502 (6th ed. 1990).

27. *Rue*, 713 A.2d at 84.

28. *Id.*

29. *Id.* However, the superior court determined that this was not enough to satisfy the requirements of collateral estoppel due to the fact that the court, in analyzing the issue, must look at public policy issues. *Id.*

30. *Rue*, 713 A.2d 82 at 85 (citing *Odgers v. Unemployment Compensation Board of Review*, 525 A.2d 359 (Pa. 1987)). *Odgers* involved a work stoppage by teachers that was deemed by the Commonwealth Court to be an illegal "strike" in accordance with Section 1002 of the Public Employee Relations Act, Act of July 23, 1970, P.L. 563, No. 195, as amended, 43 P.S. §1002. *Odgers*, 525 A.2d at 359. In that case the Supreme Court of Pennsylvania held that the determination of an illegal strike did not have a preclusive effect, when the teachers later appealed the Unemployment Compensation Board of Review's denial of unemployment benefits, which was made in accordance with Section 402(d) of the Unemployment Compensation Law, 43 P.S. §802(d). *Rue*, 713 A.2d at 85 (citing *Odgers*, 525 A.2d at 387-89). Section 802(d) of the Unemployment Compensation Law provides that, "an employee shall be ineligible for compensation for any week . . . in which his unemployment is due to a stoppage of work, which exists because of a labor dispute (other than a lock-out) at the factory, establishment or other premises at which he is or was last employed. . . ." *Rue*, 713 A.2d at 85 (quoting 43 PA. CONS. STAT. ANN. 802(d) (1991)). In *Odgers* the court stated, "Public Employee Relations Act (PERA) and the Pennsylvania Unemployment Compensation Law were enacted to promote decidedly different public policies of this Commonwealth. . . it logically follows that the determination of what constitutes a strike for

the superior court had been correct in observing that the issue of whether Rue had committed an act of willful misconduct was distinct from the conclusion of whether K-Mart had made defamatory statements for purposes of the Pennsylvania Unemployment Compensation Law.³¹ The supreme court determined that such legal conclusions were not at issue in the present case.³² According to the court, the issue in this case was not one of law and fact, but one of pure fact.³³ The court concluded that the public policy differences that may exist between the civil action for defamation and the Pennsylvania Unemployment Compensation Law were immaterial.³⁴

Next, the court looked at the fourth and final prong of the test for collateral estoppel; that is, whether K-Mart, the party against whom collateral estoppel was asserted, had a full and fair opportunity to litigate the issue of whether Rue had stolen the potato chips during the first action (the unemployment compensation hearing).³⁵ The court concluded that, although the minimum requirements of procedural due process are satisfied by proceedings before a referee, parties are not able to litigate issues before a referee in the same fashion that may do so in a court of record.³⁶ For example, in a referee's hearing, evidentiary rules do not apply and there is no prehearing discovery procedure.³⁷

In addition, the supreme court noted two important factors that differentiate court proceedings from unemployment compensation

purposes of PERA is not coextensive with the determination whether a work stoppage is a strike or a lock-out under the terms of the Unemployment Compensation Law. . . ." *Rue*, 713 A.2d at 85 (quoting *Odgers*, 525 A.2d at 363-64).

31. *Rue*, 713 A.2d at 85.

32. *Id.* The Supreme Court cites to *Bortz v. Workers' Compensation Appeal Board*, 683 A.2d 259 (Pa. 1996), which held that a disability determination in a workers' compensation proceeding is distinct from a determination of willful misconduct in an unemployment compensation proceeding. *Rue*, 713 A.2d at 85 (citing *Bortz*, 683 A.2d at 262).

33. *Rue*, 713 A.2d at 85. The Court re-emphasizes the difference between the case at bar, which involves only a factual issue, and the cases discussed previously, *Odgers* and *Bortz*, both of which involved to some extent, a question of law. *Rue*, 713 A.2d at 85.

34. *Rue*, 713 A.2d at 85. For emphasis, the court then says that regardless of public policy, a fact is a fact. *Id.*

35. *Id.*

36. *Id.* at 86. A court of record is a court that is required to keep a record of its proceedings, and that may fine or imprisonment. BLACK'S LAW DICTIONARY 353 (6th ed. 1990).

37. *Rue*, 713 A.2d at 86. Section 505 of the Unemployment Compensation Law, 43 P.S. § 825 states, "The conduct of hearings and appeals . . . shall be in accordance with rules of procedure prescribed by the board whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure . . ." *Id.* at 86 (quoting 43 PA. CONS. STAT. ANN. § 825 (1991)).

proceedings.³⁸ The first difference is that cases dealing with unemployment compensation are adjudicated quickly and are designed to allow the unemployed person, who has no income, to receive money as rapidly as possible.³⁹ The second difference is that the amount of money being discussed in unemployment compensation hearings is often insignificant to the employer, because the most the employer would usually pay would be a minimal increase in the amount it devotes to the Pennsylvania Unemployment Compensation Fund.⁴⁰ Because there is little chance that an employer will be forced to pay a large sum of money at an unemployment compensation hearing, the employer has virtually no incentive to litigate the case to its utmost ability.⁴¹ The *Rue* Court noted that this disincentive is not present in civil actions, as demonstrated by this case, in which K-Mart was subject to considerably larger liability than that at stake at the hearing conducted by a referee.⁴²

In light of these two factors, the court concluded that the prohibitive effects of a referee's factual findings are annulled by the procedural and economic disparities between unemployment compensation hearings and civil actions.⁴³ The court looked to Section 28 of the Restatement (Second) of Judgments, which provides that collateral estoppel should not apply when there is a difference either in the quality or extensiveness of the different procedures or in the amount in controversy.⁴⁴ The court found that

38. *Id.*

39. *Id.* The court cites to *California Department of Human Resources v Java*, 402 U.S. 121, 136 (1971) and refers to *McNeill v Unemployment Compensation Board of Review*, 511 A.2d 167, 169 (Pa. 1986) and *Swineford v Snyder County*, 15 F.3d 1258, 1268-69 (3d Cir. 1994) to emphasize that proceedings conducted by a Referee are brief and informal by design. *Rue*, 713 A.2d at 86. The court also cites statistics gathered by the Department of Labor and Industry to illustrate how quickly cases are adjudicated in front of Referees. *Id.* From July 1, 1996 to June 30, 1997, a one year period, the fifty referees employed by the Commonwealth to hear unemployment compensation cases issued 51,199 decisions, which is more than 1,000 decisions per referee. *Id.*

40. *Rue*, 713 A.2d at 86.

41. *Id.* In some instances, the employer may not even attend the hearing or retain counsel to represent them at the hearing. *Id.*

42. *Id.* at 86.

43. *Id.*

44. *Id.* The court states that collateral estoppel is not allowable where "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two [proceedings] or . . . [t]he party sought to be precluded . . . did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action." *Id.* (citing RESTATEMENT (SECOND) OF JUDGMENTS § 28). The court discussed two comments contained in Section 28, which state that collateral estoppel should not apply when one procedure is geared toward prompt, inexpensive determination of rather small

Section 28 of the Restatement (Second) of Judgments was applicable to *Rue* because of the differences in the possible economic consequences of the two proceedings and because of the quick and informal nature of the unemployment compensation hearing.⁴⁵

Accordingly, the court decided that K-Mart had not had a full and fair opportunity during the unemployment compensation hearing to litigate the issue of whether Rue had misappropriated the potato chips.⁴⁶ The supreme court affirmed the superior court's holding that the referee's factual finding should not have been used to collaterally estop K-Mart from litigating the issue of whether Rue had stolen the potato chips in the defamation action.⁴⁷ The case was remanded to the trial court to determine the issue of defamation.⁴⁸

The first case in which the United States Supreme Court directly addressed the issue of collateral estoppel, or issue preclusion, and differentiated it from the doctrine of res judicata was *Cromwell v. County of Sac*.⁴⁹ *Cromwell* involved bonds issued by Sac County, Iowa, to raise money for the construction of a new courthouse.⁵⁰ The plaintiff, Cromwell, sued to recover on four bonds issued by the county and four coupons attached to the bonds.⁵¹ The county asserted the defense that an earlier action, *Smith v. Sac County*,⁵² involving the same bonds at issue in this case, estopped Cromwell from raising his present claim.⁵³ In addition, the county presented

claims and the other proceeding is much larger, is more detailed, and involves a complex claim, or a vastly different amount in controversy. *Rue*, 713 A.2d at 86, (citing RESTATEMENT (SECOND) OF JUDGMENTS, § 28, Comments d, j, and *Verbilla v. Workers' Compensation Appeal Bd.*, 668 A.2d 601, 605 (Pa. Commw. 1995)).

45. *Rue*, 713 A.2d at 86.

46. *Id.*

47. *Id.* The Court notes that the holding espoused by the court was limited to the application of collateral estoppel in the context of unemployment compensation only, and has no bearing on caselaw dealing with the preclusive effect of workers' compensation proceedings due to the distinct statutes and procedures dealt with in those cases. *Id.* at 87.

48. *Id.*

49. 94 U.S. 351, 24 L.Ed. 195 (1876).

50. *Cromwell*, 94 U.S. at 358-59.

51. *Id.* at 351.

52. 78 U.S. 139 (1870).

53. *Cromwell v. Sac County*, 94 U.S. 351, 352 (1876). In *Smith*, 78 U.S. at 146, Smith claimed that he was the owner of 25 interest coupons that had been issued by the county for the erection of the courthouse and that he had paid value for them before they had reached maturity, therefore, they were valid claims against the county. *Id.* The county denied all of the allegations set forth by Smith, especially those dealing with authorization and validation of the bonds. *Id.* at 143. The court hearing the case ruled that, as a matter of law, the bonds and coupons were void and not attributable to the county, so the county had no

proof that Cromwell had been the actual owner of the coupons at issue in the action brought by Smith.⁵⁴ The county argued that the *Smith* action was brought for Cromwell's sole benefit.⁵⁵

In deciding *Cromwell*, the court explicitly stated the difference between the doctrines of collateral estoppel, or issue preclusion, and *res judicata*, or claim preclusion. Under a theory of *res judicata*, a judgment on the merits serves as an absolute bar to subsequent actions.⁵⁶ This absolute bar applies to the present claim, every matter offered to sustain or defeat the claim, and both parties to the present claim as well as those in privity with the parties.⁵⁷ Collateral estoppel, on the other hand, operates as a bar to only those matters in issue or those claims upon which the verdict or judgment rested on.⁵⁸ Therefore, in cases involving collateral estoppel, the question involves the issue that was actually litigated and decided in the first action and not what might have been litigated and decided.⁵⁹

Applying this rule to *Smith*, the Supreme Court held that, because each bond and coupon represented a different claim, litigation was barred only as to the coupons actually at issue in that action.⁶⁰ Smith's inability to factually show that he paid value for the coupons has no bearing as to whether Cromwell could factually show that he paid value for his bonds and coupons.⁶¹ Although the Court was unwilling to apply the doctrine of *res judicata* to the bonds in the second case, the Court did apply the doctrine of collateral estoppel to preclude relitigation of one issue previously decided in *Smith*—whether the bonds were legal or fraudulent.⁶² The Court's previous determination that the bonds had

responsibility to pay on the bonds or coupons. *Id.* The supreme court, on appeal, held that the evidence showed that the bonds had been fraudulently issued in the first place, which then put the burden on Smith to show that regardless of the fraudulent state of the bonds and coupons, he had paid value for them before maturity. *Id.* at 148. The Court concluded that Smith was not a holder of coupons for value, so the coupons were void, allowing the county to escape all liability. *Id.* at 148-49.

54. *Cromwell*, 94 U.S. at 352.

55. *Id.*

56. *Id.* *Res judicata* involves the effect of a judgment as a bar against the prosecution of a second action on the same claim. *Id.*

57. *Cromwell*, 94 U.S. at 353. Collateral estoppel involves the effect of a judgment as an estoppel in a different action between the same parties on a different claim or cause of action. *Id.*

58. *Id.* at 353.

59. *Id.*

60. *Id.* at 359.

61. *Id.* at 360.

62. *Id.* at 359.

been issued fraudulently collaterally estopped Cromwell from relitigating that issue in his case.

⁶³ The next case to advance the concept of collateral estoppel was heard more than 60 years after *Cromwell*. In *Bernhard v. Bank of America*,⁶⁴ the central issue was whether an interbank transfer could be considered a gift. *Bernhard* also addressed the issues of collateral estoppel and res judicata.⁶⁵ *Bernhard* eliminates the requirement of mutuality and clarifies the requirements for the application of the doctrine of collateral estoppel.⁶⁶ The Supreme Court of California found that there was no compelling reason to require a party asserting collateral estoppel or res judicata to have been a party, or in privity with a party to, the earlier litigation and cited a number of courts that had already abandoned the requirement of mutuality.⁶⁷ The court was careful to note, however, that the requirements of due process forbid the application of res judicata or collateral estoppel against a party unless he or she is bound by the earlier litigation.⁶⁸ By dispensing with the mutuality requirement, the court permitted Cook to assert res judicata against Bernhard's claim.⁶⁹

Significantly, *Bernhard* also clarifies the requirements for the use of collateral estoppel.⁷⁰ The court identified three requirements for collateral estoppel to apply.⁷¹ These requirements are (1) that the issue decided in the previous adjudication be identical with the one

63. *Id.*

64. 122 P.2d 892 (Cal. 1942). Clara Sather, an elderly woman in poor health, authorized Cook to make drafts jointly from her bank account. *Id.* at 893. Cook's wife opened a second bank account in Sather's name, without her authority. *Id.* Funds were then transferred from the first account to the second account, and eventually Sather signed a paper authorizing her funds to be transferred to the new account. *Id.* After Sather died, Cook was named executor; eventually he resigned as executor, making no mention of the bank account. *Id.* Beneficiaries under the will filed objections with the probate court, and the court determined that the money in the bank account was a gift to Cook from Sather. *Id.* One of the beneficiaries was named as administratrix after Cook's resignation, and she filed the instant action, seeking to recover the money in the bank account under the allegation that Sather had never authorized its withdrawal. *Id.*

65. *Id.* at 894.

66. *Id.* at 895. Mutuality is the idea that a judgment will not be held conclusive in favor of one person unless it would be conclusive against him had the case been decided the other way. BLACK'S LAW DICTIONARY, 1021 (6th ed. 1990).

67. *Bernhard*, 122 P.2d at 894-95. Justice Traynor goes on to say that "just why a party who was not bound by a previous action should be precluded from asserting it as res judicata against a party who was bound by it is difficult to comprehend." *Id.* at 895

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

in the action in question, (2) that there be a final judgment on the merits, and (3) that the party against whom the defense is asserted was a party or is in privity with a party to the previous adjudication.⁷²

The first federal case to allow the full application of collateral estoppel to administrative findings was *United States v. Utah Construction and Mining Co.*⁷³ In this case, Utah Construction had a contract dispute with the Atomic Energy Commission;⁷⁴ Utah Construction took the dispute to the contract appeals board, as it was required to do by the terms of the contract, and the appeals board made factual findings and awarded partial relief to Utah Construction.⁷⁵ Not satisfied with the result, Utah Construction sued the government for breach of contract in federal district court.⁷⁶ On appeal, the United States Supreme Court held that the contract appeals board's findings did have preclusive effect under the doctrine of collateral estoppel.⁷⁷ The Court held that when an administrative agency acts in a judicial capacity rather than an administrative capacity and the opportunity to litigate was adequate, res judicata or collateral estoppel should apply to findings of fact.⁷⁸

Another Supreme Court case that shaped the modern doctrine of collateral estoppel was *Parklane Hosiery v. Shore*.⁷⁹ At issue in *Parklane Hosiery* was whether a party is collaterally estopped from relitigating the same issues of fact before a jury on the basis of adverse findings of fact as to those same issue in an equitable action involving a party not party to the case at bar.⁸⁰ Two different actions had been brought against Parklane Hosiery for allegedly issuing a materially false and misleading proxy statement in

72. *Bernhard*, 122 P2d at 895.

73. 384 U.S. 394, (1966).

74. *Utah Construction*, 384 U.S. at 400.

75. *Id.* at 401. The contract appeals board denied Utah Construction's request for delay damages but granted a request for a time extension, both of which resulted from Utah Construction encountering float rock in the course of their work that increased costs and time for the project. *Id.*

76. *Id.* The court of claims held that it was not bound by the factual determinations of the Board, conducted a de novo hearing, and held that the government did breach the contract. *Id.* at 418-419.

77. *Utah Construction*, 384 U.S. at 421-22. The court stated that the decision rested on the agreement of the parties as modified by the Wunderlich Act, but that the result reached was in accord with the general principles of collateral estoppel. *Id.*

78. *Utah Construction*, 384 U.S. at 422, citing *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, (1940).

79. 439 U.S. 322 (1979).

80. *Parklane Hosiery*, 439 U.S. at 324.

connection with a merger.⁸¹ The first action was a stockholder class action suit for damages, and the second was an action seeking injunctive relief, brought by the Securities and Exchange Commission ("SEC").⁸² The SEC action was decided first, and the stockholders contended that, on the basis of the findings in that case, Parklane was collaterally estopped from relitigating whether the proxy statement was materially false, misleading, and against the law.⁸³ The United States Supreme Court held that trial courts should have broad discretion to determine whether "offensive" collateral estoppel, in which a plaintiff attempts to estop a defendant from relitigating issues that the defendant had lost in an action brought by another plaintiff, should be utilized.⁸⁴ The Court created the following general rule to determine whether offensive collateral estoppel is applicable and necessary, so as to minimize any possible negative effects its use may create: the trial judge should not allow offensive collateral estoppel when a plaintiff easily could have joined in the earlier action or when the application would be unfair to a defendant, such as when the defendant did not have the same incentive in the first action to litigate as he would in the second action.⁸⁵ Under this rule, the *Parklane* Court allowed the use of offensive collateral estoppel to estop Parklane from relitigating issues that had been decided in the suit brought by the SEC.⁸⁶

The Pennsylvania Supreme Court first identified the requirements for the application of collateral estoppel in Pennsylvania in *Safeguard Mutual Insurance Co. v. Williams*.⁸⁷ In this case, the Pennsylvania Supreme Court discussed whether the doctrine of res

81. *Id.*

82. *Id.* Injunctive relief was sought by the SEC for essentially the same reason that the first action was filed, that the petitioners had issued a false and misleading proxy statement in violation of SEC regulations. *Id.*

83. *Id.* at 325. The district court denied the motion on the grounds that Parklane's Seventh Amendment right to a jury trial would be denied if collateral estoppel was used. *Id.* The Court of Appeals for the Second Circuit reversed, deciding that as long as Parklane had a full and fair opportunity to litigate in the nonjury trial, then collateral estoppel can apply in a subsequent jury trial to the same issues of fact. *Id.*

84. *Id.* at 331. The Supreme Court was concerned that offensive collateral estoppel creates an incentive for the plaintiff to "wait and see" what happens in the first action, thus discouraging judicial economy by combining plaintiffs together in one action against the defendant. *Id.* Also, the Court was worried that offensive collateral estoppel may be unfair to the defendant because during the first action the defendant may not have the same incentive to litigate as he would in the second action. *Id.* at 330.

85. *Parklane Hosiery*, 439 U.S. at 331.

86. *Id.* at 332-33.

87. 345 A.2d 664 (Pa. 1975).

judicata or collateral estoppel could prevent insurance policy holders from instituting an action when they had been involved in a previous suit brought by the state insurance department, that arose out of the same action on the part of the defendant.⁸⁸ The court set forth four requirements for the application of collateral estoppel:⁸⁹ (1) the issue decided in the first adjudication must be identical to the one presented in the later action; (2) there must be a final judgment on the merits; (3) the party against whom the defense is asserted must be a party to or in privity with a party to the first adjudication; and (4) the party against whom the defense is asserted must have had a full and fair opportunity to litigate the issue in question in the previous action.⁹⁰ The court held that prong one, identity of issues, had not been satisfied in this case; therefore, the doctrine of collateral estoppel would not be applied to the suit brought by the policyholders.⁹¹ The first action instituted by the insurance department was based on an alleged violation of statutory law resulting in irreparable harm to the policyholders.⁹² The second case was based on alleged violations of individual policyholders' contractual rights and the irreparable harm that could occur if their policies were cancelled.⁹³ The court found that, on the basis of these facts, the requirement of identity of issues was not satisfied.⁹⁴

In *Odgers v. Commonwealth Unemployment Compensation Board of Review*,⁹⁵ the Supreme Court of Pennsylvania addressed the issue of whether preclusive effect should be given to a finding of the definition of "strike" under the Public Employee Relations Act, in a later action under the Pennsylvania Unemployment Compensation Act. The supreme court held collateral estoppel did not apply against the second determination because the two acts were enacted to promote different public policies of the state.⁹⁶

88. *Safeguard*, 345 A.2d at 664.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 668-69.

93. *Safeguard*, 345 A.2d at 669.

94. *Id.* at 668-70.

95. 514 Pa. 378, 385, 525 A.2d 359, 362 (1987).

96. *Odgers*, 514 Pa. at 387. The Court, in looking at the first act, entitled the Public Employee Relations Act, concluded that it was created to give public employees the right to organize and bargain with their employers, so as to create good working relationships that would ultimately benefit the entire state. *Id.* The second act, the Unemployment Compensation Law, was created to alleviate economic hardship in the cases of unemployed individuals, which has less of a direct impact on the state as a whole. *Id.*

Therefore, the court concluded that the "identity of issues" prong was not satisfied.⁹⁷

One year after *Odgers*, the Third Circuit undertook a similar analysis in *Kelley v. TYK Refractories Co.*⁹⁸ The Third Circuit considered whether factual findings made by the unemployment compensation board of review that an appellant had quit his job without compelling reasons collaterally estopped that appellant from bringing a civil claim for wrongful discharge.⁹⁹ The circuit court employed the rationale used in *Odgers* to determine that, given the differing public policies of the Unemployment Compensation Act and the Public Employee Relations Act, there was no identity of issues justifying collateral estoppel.¹⁰⁰ The court reasoned that, under the Public Employee Relations Act, the existence of racial discrimination in connection with a discharge is crucial to the litigation; in the first action before the unemployment compensation board of review, no findings pertaining to racial discrimination were made.¹⁰¹ Because an issue central to the second action was not discussed in the first action, there can be no collateral estoppel.¹⁰²

One year after *Kelley*, the Pennsylvania Superior Court decided a case that appeared to contradict *Odgers*¹⁰³ and *Kelley*.¹⁰⁴ In *Frederick v. American Hardware Supply Co.*, the superior court considered whether an earlier decision of an unemployment compensation board of review denying benefits to a group of employees who were discharged as a result of alleged willful misconduct collaterally estopped those employees from asserting in court that, under their contract, they had been wrongfully

97. *Id.* at 364-65.

98. 860 F.2d 1188 (3d Cir. 1988).

99. *Kelley*, 860 F.2d at 1189. TYK Industries, a wholly-owned subsidiary of a Japanese Company, hired Mr. Kelley, a white male, to be Chief Operating Officer and Executive Vice-President of the company. *Id.* Mr. Kelley was later terminated by TYK, and he alleged that his discharge was due to his race, in violation of employment discrimination laws. *Id.* at 1190. The next year Mr. Kelley attempted to obtain unemployment compensation, which was ultimately denied by the unemployment compensation board of review. *Id.* at 1191. After his rejection, Kelley filed a claim against TYK, alleging wrongful discharge and violation of his federal civil rights. *Id.* During the course of the court proceeding, determinations made by the unemployment board were used by TYK to collaterally estop certain issues from being litigated. *Id.* at 1192.

100. *Id.* at 1194-95.

101. *Id.* at 1195-96.

102. *Id.* at 1196-97.

103. *Odgers v. Commonwealth Unemployment Compensation Bd. of Review*, 525 A.2d 359 (Pa. 1987).

104. *Kelley*, 860 F.2d at 1188.

discharged.¹⁰⁵ The court held that the decision rendered by the unemployment compensation board regarding willful misconduct did collaterally estop the discharged employees from declaring that they had been wrongfully discharged.¹⁰⁶ In this case, as in other cases, the court recognized that, of the four elements required for the application of collateral estoppel, the requirement of identity of issues would merit the most scrutiny.¹⁰⁷ After examining the unemployment compensation board's decision that the employees had been discharged for "willful misconduct," the court opined that this finding precluded the employees from asserting that they had been wrongfully discharged.¹⁰⁸ The court decided that the requirement of "identity of issues" had been satisfied and because the other three requirements had also been met, applied the doctrine of collateral estoppel.¹⁰⁹

One year after the decision rendered in *Frederick v. American Hardware Supply Co.*, the Commonwealth Court of Pennsylvania issued a contrary ruling on a similar issue.¹¹⁰ In *Pennsylvania State Police v. Commonwealth Unemployment Compensation Board of Review*, the court considered whether a state police trooper who had been discharged for misconduct was collaterally estopped from asserting that he had not committed willful misconduct during a subsequent unemployment compensation hearing.¹¹¹ The court

105. 557 A.2d 779 (Pa. Super. 1989).

106. *Frederick*, 557 A.2d at 781. Mr. Frederick and other former employees of American Hardware Supply Co. sued their former employer, alleging that American Hardware had breached an implied contract of employment when American wrongly discharged them. *Id.* The employees claimed that certain provisions of their employee handbook that outlined the terms and conditions of employment created the implied contract. *Id.*

107. *Id.* at 76. Other cases in which the court focused its analysis on the requirement that the issue decided in the prior adjudication was identical with the one presented in the later action, include *Safeguard Mutual Insurance Co. v. Williams*, 345 A.2d 664 (Pa. 1975), *Odgers v. Commonwealth Unemployment Compensation Bd. of Review*, 525 A.2d 359 (Pa. 1987), and *Kelley v. TYK Refractories Co.*, 860 F.2d 1188 (3d Cir. 1988).

108. *Frederick*, 557 A.2d at 781. Willful misconduct was defined by the court as "an act of wanton or willful disregard of the employer's interests, deliberate violation of the employer's rules or instruction, and disregard of standards of behavior which an employer has a right to expect of an employee." *Id.* (quoting *Kilgus v. Commonwealth Unemployment Compensation Bd. of Review*, 466 A.2d 1121 (Pa. Commw. 1983)). The conduct that led the board to conclude "willful misconduct" by the employees was deemed to be the equivalent of good cause for dismissal, thereby disallowing any contention of wrongful discharge. *Frederick*, 557 A.2d at 781.

109. *Id.*

110. *Pennsylvania State Police v. Commonwealth Unemployment Compensation Bd. of Review*, 578 A.2d 1360, 1366 (Pa. Commw. 1990).

111. *Pennsylvania State Police*, 578 A.2d at 1361. The misconduct for which the state trooper was discharged involved a court martial conducted by the State Police in which the

ultimately decided that collateral estoppel could not be applied in this context, because the requirement of "identity of issues" was not satisfied.¹¹² In this case the court adopted a narrow view as to what issues are decided in an unemployment compensation hearing.¹¹³

The court found that in a willful misconduct case it must determine whether the state is justified, under the Pennsylvania Unemployment Compensation Law, in denying benefits to an employee, and should not determine whether the employer was justified in firing the employee.¹¹⁴ Under this analysis, the court held that collateral estoppel was inapplicable because of lack of identity of issues.¹¹⁵

In *Swineford v. Snyder County, Pennsylvania*, the Third Circuit Court of Appeals determined whether a finding by the unemployment compensation review board that an employee did not violate the employer's rules or act to detrimentally affect the employer's business would collaterally estop the employer and supervisors from rebutting allegations in a subsequent civil action filed by the employee alleging that the employee had been fired because of things she said.¹¹⁶ Although the court acknowledged that the issue of whether collateral estoppel applies to determinations made during unemployment compensation hearings was unsettled, it ultimately held that the Pennsylvania courts would not apply collateral estoppel in this situation.¹¹⁷ The court used an analysis

trooper was found guilty of "Unbecoming Conduct" as well as "Discrimination or Harassment," in violation of the State Police Code. *Id.* at 1360 (citing State Police Court Martial Board Hearing, 12/15/88, Conclusions of Law, Nos. 2, 3). Both charges stemmed from allegations made by two female police officers that the trooper had sexually harassed the *Pennsylvania State Police*, 578 A.2d at 1362.

112. *Id.* at 1361.

113. *Id.*

114. *Id.* (citing *Frumento v. Unemployment Compensation Bd. of Review*, 351 A.2d 631 (Pa. 1976)).

115. *Id.* at 1361.

116. *Swineford v. Snyder County Pennsylvania*, 15 F.3d 1258, 1261-62 (3d Cir. 1994). In this case the plaintiff is appealing a lower court decision in favor of the defendants based on an action filed by the plaintiff claiming that the defendants, when they fired her for publicly disclosing alleged electoral improprieties, had violated her First and Fourteenth Amendment rights. *Id.* at 1261. The relevant issue here was whether collateral estoppel would apply in the present action based on findings made by an Unemployment Compensation Board. *Id.* at 1261-62.

117. *Swineford*, 15 F.3d at 1267, 1269. The court in drawing this conclusion cited to *Frederick v. American Hardware Supply Co.*, 557 A.2d 779 (Pa. 1989), *Kelley v. TYK Refractories Co.*, 860 F.2d 1188 (3d Cir. 1988), and *Odgers v. Commonwealth Unemployment Compensation Bd. of Review*, 525 A.2d 359 (Pa. 1987).

similar to that used in *Kelley v. TYK Refractories Co.*,¹¹⁸ and determined that the issue of discharge decided by an unemployment compensation board was not the same as the issue of discharge presented in a civil rights claim therefore, the requisite identity of issues is lacking.¹¹⁹ In addition, the court looked at the policies underlying each of the two laws and concluded that allowing collateral estoppel in these cases would undermine the purpose of unemployment compensation hearings: to provide fast relief to those who seek it.¹²⁰ These factors resulted in the court's decision not to apply collateral estoppel in this case.¹²¹

In analyzing the various decisions handed down by both the federal and Pennsylvania courts involving the application of collateral estoppel from an administrative hearing decision to a civil action, it is clear that *Rue* is correct and long overdue. For years the courts have shifted back and forth in deciding whether collateral estoppel applied between the two judicial proceedings. It appears that those decisions allowing the application of collateral estoppel failed to examine each of the four prongs set out in *Safeguard Mutual Ins. Co.*¹²² Most cases focused on the prong dealing with identity of issues, which, although important in some cases, is not the most important in this type of collateral estoppel situation. In the context of an unemployment compensation hearing, the prong requiring the party against whom collateral estoppel is asserted to have a full and fair opportunity to litigate the issue in question in a prior action could not be satisfied without recreating the entire unemployment compensation system. In *Rue*, the Pennsylvania Supreme Court correctly focused on this issue and the public policy questions that it raises. This aspect of

118. 860 F.2d at 1194.

119. *Swineford*, 15 F.3d at 1268.

120. *Id.* at 1268-69. The Court observed that the Unemployment Compensation Law is a depression-era statute, that was created to provide fast, efficient compensation to unemployed workers, and to shift the costs related to unemployment from the state welfare system to employers. *Id.* at 1268.

121. *Id.* at 1269. To sustain their decision, the court noted similar analysis used by other states in cases involving collateral estoppel in relation to unemployment compensation hearings. *See Board of Educ. v. Gray*, 806 S.W.2d 400, 403 (Ky. Ct. App. 1991) (holding that it would not be equitable to apply the doctrine of collateral estoppel); *Shovelin v. Central N.M. Elec. Coop.*, 850 P.2d 996, 1004 (N.M. 1993) (affirming the decision of the trial court to refuse the application of collateral estoppel to findings of the employment security department); *Ferris v. Hawkins*, 660 P.2d 1256, 1259 (Ariz. App. 1983) (denying the application of collateral estoppel because unemployment compensation and court action seeking reinstatement of job involved 'distinct legal rights').

122. *Safeguard Mutual Ins. Co. v. Williams*, 345 A.2d 664 (Pa. 1975).

collateral estoppel was grossly neglected in *Frederick*, the leading Pennsylvania case that applied collateral estoppel to an unemployment compensation hearing.¹²³

The public policy behind the unemployment compensation system restricts litigants, especially employers, from litigating their case to the fullest extent possible. The unemployment compensation system is a high volume system created to churn out as many decisions as feasible in a limited time. The motivation to do this is created by the premise of the system, which is to provide benefits to those who need them.¹²⁴ A referee rather than a judge conducts the first unemployment hearing and there is no requirement that either side be represented by counsel. The unemployment compensation procedure may at best be labeled quasi-judicial.¹²⁵

Although the unemployment compensation hearing procedure is sufficient for the purpose it serves, it simply does not satisfy the requirements for the doctrine of collateral estoppel. The expedient nature of the process, and the minimal consequences that it produces for the employer encourages employers not to litigate to their utmost ability. The supreme court focused on these public policy issues in the instant case. To allow a decision made in the unemployment compensation context to have preclusive effect in a civil action that could involve millions of dollars would distort the doctrine of collateral estoppel and undermine the long struggle in the courts for a precise definition of collateral estoppel.

The Pennsylvania Supreme Court's decision in *Rue* was correct; however, the tendency of the courts in the past to vacillate in their decisions should prompt the state legislature to take action. The unemployment compensation system is a state-created entity, so it would be natural for the state legislature to pass legislation mandating that decisions rendered by the unemployment compensation board have no preclusive effect in any subsequent

123. In *Frederick v. American Hardware Supply Co.*, 557 A.2d 779 (Pa. 1989), the sole reference made to the fourth prong of the test for the application of collateral estoppel was the parties in the unemployment compensation proceedings had the opportunity "to litigate on the merits." *Frederick*, 557 A.2d 779, 780 (Pa. Super. 1989).

124. See *Odgers v. Pennsylvania Unemployment Compensation Bd. of Review*, 525 A.2d 359, 364 (Pa. 1987).

125. Quasi judicial is defined as: a term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. BLACK'S LAW DICTIONARY 1245 (6th ed. 1990).

civil action. Such legislation is the only way the issue will be ultimately settled. Because the courts have not been able to draw a steadfast decision on the issue during the past twenty years, especially when specific guidelines in the form of the four prongs exist to guide the courts in their analysis, one cannot be sure that *Rue* will stand.

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